REMARKS

Claims 36-41, 43-51 and 53-63 are pending in this application and are rejected under 35 U.S.C. § 103(a).

Rejection Under 35 U.S.C. § 103(a) of Claims 36-41, 43-51, and 53-63

The Examiner rejected **claims 36-41, 43-51, and 53-63** under 35 U.S.C. § 103(a) as unpatentable over Landvater (U.S. 6,609,101) in view of Dulaney et al. (U.S. 6,341,269).

Claim 36

We have amended **claim 36** as follows:

A ~~computer-implemented~~ method of ~~prorating~~ evaluating the impact of inventory budgets ~~among~~ on availability of items to meet projected future demand, including:

setting inventory budgets for groups of items;

projecting future demand for the items;

~~setting notional~~ scheduling simulated orders and deliveries for the items in quantities sufficient to meet the projected future demand for the items, ~~utilizing the projected future demand~~ unconstrained by the inventory budgets;

simulating future inventory for the items, utilizing current inventory, the projected future demand, firm future deliveries and the ~~notional~~ simulated orders and deliveries;

prorating the inventory budgets among the items, for a plurality of predetermined time periods; and

reporting open to buy values that compare the prorated inventory budgets for the items or aggregations of the items to inventory costs that would result from executing the simulated orders and deliveries in quantities sufficient to meet the projected future demand ~~the simulated future inventory for the items or aggregations of the items~~.

These limitations are not found in Landvater in view of Dulaney et al.

This amended claim restates an environment in which the invention may usefully be practiced, replaces the phrase "notional delivery" with a meaning that one of ordinary skill in the art would ascertain by reading the specification (thereby avoiding any narrowing of the claims) and makes it clear that inventory budgets are compared to simulate inventory costs. Neither Landvater nor Dulaney et al. have anything to do with the amended method of evaluating the impact of inventory budgets.

The combination of Landvater and Dulaney et al. does not meet the limitations as amended. With respect to claim 36, the Examiner has relied on Dulaney et al. only for reporting (Resp. 10-10-2006 at 16; OA 4-7-2006 at 7; FOA 4-5-2007 at 8), so we begin with Landvater.

The Examiner has made it clear that Landvater scheduled simulated orders <u>constrained by inventory budgets</u>, rather than unconstrained by inventory budgets, as we positively claim. The Examiner committed herself (FOA 4-5-2007 at 4):

<u>Landvater explains how he looks at inventory budgets</u> in terms of projections (such as sales and inventory needs and costs), and then determines the costs and financials specific to the set of products being examined. Specifically, the financial system projects costs of the products in inventory and uses cash flow planning to calculate a projected inventory. Thus <u>the budgets</u> and financials <u>constrain the inventory of the future.</u>

Beginning with a budget and simulating orders and deliveries <u>unconstrained by the budget</u> is the point of this claim. Because <u>Landvater conducts simulations constrained by budgets,</u> Landvater does not render the amended claim obvious and actually teaches away from what we claim.

For completeness, the combination of Landvater and Dulaney et al. does not teach beginning with an inventory budget and running a simulation, including simulated orders and deliveries, that ignores the inventory budget. As we previously explained (Resp. 10-10-2006 at 16), the word "budget" does not appear anywhere in Dulaney et al. The Examiner has not found inventory budgets in Dulaney et al. either. (Compare FOA 4-5-2007 at 4, arg. (6)) The constrained vs. unconstrained conditions in Dulaney et al. have nothing to do with inventory budgets; they relate to "space constraints" (col. 4, line 40), not inventory budgets.

Therefore, claim 36 should be allowable over Landvater in view of Dulaney et al.

Claim 37

Claim 37, as amended, includes the limitations:

The method of claim 36, further including:

calculating reduced simulated orders and deliveries for the items consistent with the prorated inventory budgets; and

calculating lost sales for the items based on the reduced simulated orders and deliveries.

These limitations are not found in Landvater in view of Dulaney et al.

Neither Dulaney et al. nor Landvater teach "*calculating lost sales*" by comparing unconstrained orders and deliveries (claim 36) with "*reduced simulated orders and deliveries for the items consistent with prorated inventory budgets.*" In this claim 37 wording, the "reduced simulated orders … consistent with … inventory budgets" are constrained. We claim comparing simulations unconstrained and constrained by inventory budgets. Landvater, as the Examiner has explained, runs simulations constrained by inventory budgets, not unconstrained simulations. (FOA 4-5-2007 at 4) Dulaney et al. run "brute force" optimizations (col. 12, line 1), which are not simulations. The brute force optimizations are either constrained or unconstrained by available shelf space (col. 4, line 40), without any mention of inventory budgets. The combination of references cannot include features that neither reference supplies.

Therefore, claim 37 should be allowable over Landvater in view of Dulaney et al.

Claims 38-41 and 43-44

Claims 38-44 should be allowable over Landvater in view of Dulaney et al. for at least the same reasons as claims 36 and 37, from which they depend.

Claims 45 and 46

Claims 45 and 46 include the limitations:

further including reporting the simulated future inventory levels that exceed the optimal stocking levels.

These limitations are not found in Landvater in view of Dulaney et al.

The Landvater passage, col. 11, lines 25-50, on which the Examiner relies (OA 4-7-2006 at 7; FOA 4-5-2007 at 10) does not read on this limitation. Landvater calls for reserving weekly forecasting and the associated CPU cycles for high sales volume items. Col. 11, lines 32-39. No reporting is involved, because Landvater's feature is intended to automatically limit CPU and memory usage, without user intervention.

> If an override is not specified, the logic proceeds to step **124** where a determination is made if the projected annual sales forecast for a product at a location exceeds the user-specified threshold for weekly forecasting (100 products, for example). If so, weekly forecasting is used, as indicated by step **126**. If not, then the logic proceeds to step **128**.
>
> At step **128** a determination is made if the projected annual sales forecast for a product at a location is less than the user-specified threshold for weekly forecasting (a sales rate of 100 products year, for example), and greater than the user-specified threshold for monthly forecasting (a sales rate of 12 products per year, for example). If so, then monthly forecasting is used, as indicated by step **130**. If not, then the logic proceeds to step **132**.
>
> At step **132** a determination is made if the projected annual sales forecast for a product at a location is less than the user-specified threshold for monthly forecasting (a sales rate of 12 products per year, for example). If so, then a longer time period is used for forecasting, as indicated by step **134**. The longer period may be user specified, and could be any length of time, but for purposes of illustration might be one quarter of a year, or one-half a year.
>
> In the case of monthly or longer forecast periods, weekly forecasts are accumulated into months (four or five weeks) or longer periods, and are then stored in the database **36**, as indicated by step **136**

This passage, on plain reading, does not address the limitations of claims 45 and 46.

The Examiner's reply (FOA 4-5-2007 at 5, ref. (8)) says that the passage above includes a report to the user when the "forecast for the product exceeds a forecast threshold." What the passage actually says is that the system changes granularity and CPU usage, switching among semi-annual or quarterly (line 47), monthly (line 36) and weekly (34) simulation time increments, depending on a sales rate for the product. The word "threshold" in this passage relates to choosing between simulating on a quarterly, monthly or weekly basis. Landvater's "threshold," on which the Examiner relies, has nothing to do with our claimed "optimal stocking levels."

Therefore, claims 45 and 46 should be allowable over Landvater in view of Dulaney et al.

Claims 47-50

Claims 47-50 include the limitations:

> *further including reporting values of purchase orders that have been placed but not fulfilled for the items having the simulated future inventory levels that exceed the optimal stocking levels.*
>
> *further including reporting values exceeding minimum order quantities of purchase orders that have been placed but not fulfilled for the items having the simulated future inventory levels that exceed the optimal stocking levels.*

These limitations are not found in Landvater in view of Dulaney et al.

We agree that these limitations are not found in either of the references.

The Examiner argues (FOA 4-5-2007 at 11) that it would have been obvious to one of skill in the art to generaate reports (*id.* at 5, referring to p. 11) that are not described by either of the references. She reasons, at 11, that

> It would have been obvious to one of ordinary skill in the art at the time of the invention to report values associated with purchase orders, such as the number of items ordered, in order to more accurately forecast for replenishment by including the values already ordered in the on-hand inventory. See column 5, lines 17-30, and column 14, lines 3-20, of Landvater that discusses this process.

The Examiner's rationale, "to more accurately forecast for replenishment" has nothing to do with selectively reporting the items specified in these claims. Each of the reporting limitations is triggered by "simulated future inventory levels that exceed the optimal stocking levels." The Examiner's rationale does not address this trigger. Moreover, reporting of either "values of purchase orders … not fulfilled" or "values exceeding minimum order quantities … not fulfilled" is not motivated or rationally suggested by a desire to "accurately forecast … replenishment."

Therefore, claims 47-50 should be allowable over Landvater in view of Dulaney et al.

<u>Claim 51</u>

Claim 51 should be allowable over Landvater in view of Dulaney et al. for at least the same reasons as claim 36, from which it depends.

<u>Claims 53 and 63</u>

Claims 53 and 63 include the limitations:

> *wherein future sales levels are corrected for stockouts at respective selling locations associated with the items.*

These limitations are not found in Landvater in view of Dulaney et al.

The Examiner did not respond to our rationale regarding claim 53, so we merely repeat it and await a response. Neither of the references include correction for simulated stockouts (claim 53) based on current inventory and shipments in progress (claim 36). The Examiner concedes (OA 4-7-2006 at 11; FOA 4-5-2007 at 11-12) that Landvader does not address correction of future sales levels for stockouts. The concept in Dulaney et al., columns 5-6, is unrelated to generating an accurate simulation. The cited passages of Dulaney et al. relate to optimization, irrespective of current inventory, not simulation starting with current inventory. The passages have nothing to do with claim 53 as a whole. In short, neither reference teaches the claimed limitation.

Therefore, claims 53 and 63 should be allowable over Landvater in view of Dulaney et al.

Claims 54-62

Claims 56-62 should be allowable over Landvater in view of Dulaney et al. for at lest the same reasons as the claims from which they depend.

Applicants respectfully submit that claims 36-41, 43-51, and 53-63 should be allowable over Landvater in view of Dulaney et al.

CONCLUSION

Applicants respectfully submit that the pending claims are now in condition for allowance and thereby solicit acceptance of the claims as now stated.

Applicants would welcome an interview, if the Examiner is so inclined. The undersigned can ordinarily be reached at his office at (650) 712-0340 from 8:30 a.m. to 5:30 p.m. PST, Monday through Friday, and can be reached at his cell phone at (415) 902-6112 most other times.

Fee Authorization. The Commissioner is hereby authorized to charge underpayment of any additional fees or credit any overpayment associated with this communication to Deposit Account No. 50-0869 (BLFR 1004-1).

Respectfully submitted,

Dated: 05 December 2007   _____/Ernest J. Beffel, Jr./_____
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